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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 WILLIAM ROUSER,

12 Plaintiff,

13 v.

14 PATRICK COVELLO, et al.,

15 Defendants.
16

No. 2:22-CV-1749-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion, ECF No. 10, for injunctive
19 relief.

20 The legal principles applicable to requests for injunctive relief, such as a
21 temporary restraining order or preliminary injunction, are well established. To prevail, the
22 moving party must show that irreparable injury is likely in the absence of an injunction. See
23 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res.
24 Def. Council, Inc., 129 S.Ct. 365 (2008)). To the extent prior Ninth Circuit cases suggest a lesser
25 standard by focusing solely on the possibility of irreparable harm, such cases are "no longer
26 controlling, or even viable." Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046,
27 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to demonstrate: (1) he is
28 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an

1 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public
 2 interest. See Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374). The Court cannot,
 3 however, issue an order against individuals who are not parties to the action. See Zenith Radio
 4 Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). Moreover, if an inmate is seeking
 5 injunctive relief with respect to conditions of confinement, the prisoner's transfer to another
 6 prison renders the request for injunctive relief moot, unless there is some evidence of an
 7 expectation of being transferred back. See Prieser v. Newkirk, 422 U.S. 395, 402-03 (1975);
 8 Johnson v. Moore, 948 F.3d 517, 519 (9th Cir. 1991) (per curiam).

9 Here, Plaintiff seeks an order directing prison officials to allow him to attend
 10 educational programming. See ECF No. 10. Plaintiff states that, absent educational
 11 programming, he is ineligible for parole consideration. See id. The Court finds that injunctive
 12 relief is not appropriate. First, Plaintiff does not seek injunctive relief as against individuals who
 13 are named as defendants to this action. Second, the lack of access to education programming
 14 does not create a likelihood of irreparable harm. Third, Plaintiff cannot succeed on the merits of a
 15 claim relating to access to programming because there is no constitutional right to rehabilitation
 16 or programming. See Coakley v. Murphy, 884 F.2d 1218, 1221 (9th Cir. 1989); see also
 17 Hoptowit v. Ray, 682 F.2d 1237, 1254-55 (9th Cir. 1982).

18 Based on the foregoing, the undersigned recommends that Plaintiff's motion for
 19 injunctive relief, ECF No. 10, be denied.

20 These findings and recommendations are submitted to the United States District
 21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
 22 after being served with these findings and recommendations, any party may file written objections
 23 with the Court. Responses to objections shall be filed within 14 days after service of objections.
 24 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
 25 Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 Dated: January 9, 2023



DENNIS M. COTA
 UNITED STATES MAGISTRATE JUDGE